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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,880	08/28/2003	Gregor Haab	116861	7814
25944	7590	03/09/2004	EXAMINER	
OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320			ESTREMSKY, GARY WAYNE	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 03/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/649,880	Applicant(s) HAAB ET AL.	
	Examiner Gary W Estremsky	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the separative elements which are "mounted" to be "rotatable", rotatable and laterally movable", and "laterally movable" as set forth by the "and/or" limitation. The various "mounted" features now claimed as the invention must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claims 3 and 11 are objected to because of the following informalities:

Claim 3; recitation of "the end-piece" lacks clear antecedent basis in the claim.

Claim 11; first recitation of "in" should be deleted.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 4 and 6-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As regards claim 4, it is not clear if limitation of an “elastic element, preferably a ball supported by a spring element” should be interpreted to include “elastic element” structures other than the “ball supported by a spring element”. If not, it is suggested that “preferably” be replaced with –comprising–. If it is intended to be interpreted broadly, it is suggested that limitation be rewritten as –includes a ball supported by a spring element or other elastic structure–, or simply delete recitation of “preferably a ball supported by a spring element”.

As regards claim 6, ‘as best understood’, “may” should be replaced with –can– and “possibly” should be deleted to make the limitation’s meaning clear and more definite.

Additionally regarding claim 6, it is not clear if ‘designed to be’ is intended to define a ‘capability’ of the “head-piece” (and does not positively recite or include either of the two structures recited in the alternative) or whether the claim limitation is intended to require at least one of the structures in combination as part of the claimed invention. Assuming the limitation is clarified so as to positively recite the inserted arrangement including either of the two structures, it is required the arrangements claimed as the invention be illustrated in the drawings.

Additionally regarding claim 8, due to present use of the term “possibly”, it is not clear if “detachable” is positively recited as a capability or not. It is suggested that one

of, "possibly" or "possibly detachable" be deleted, depending on intended scope and meaning.

Additionally regarding claim 11, it is not clear what being planar directions are being defined. 'As best understood' by comparison to Fig's 1-3 for example, the lock lever and its head piece rotate in a plane --parallel to-- that of the part 6. Plain language interpretation of the claim language is confusing if not contrary.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 6/1-6/3, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,203,596 to Stevens.

Stevens '596 teaches Applicant's claim limitations including : "separative elements" - door and frame including parts 16,26 as shown in Fig 3 for example, a "support device" - 10, a "locking element" - 20a, "head-piece" - protruding portion at 20b, "receptacle" - 30, "bearing" - at 18, for a "lever" - generally vertical portion of 20 as shown in Fig 3,5. Present functional language in this *product* claim amounts to broad limitation (see MPEP 2114) since it does not define any particular structure and cannot be given weight in the same way as a *step* in a *process of using* claim (see MPEP 2173.05(p) sections I,II). Particularly as read in light of the specification, it's clear that

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the claimed invention does not include the structure that has been disclosed for 'fixing', and cannot otherwise be given weight in accordance with 35 USC 112, 6th paragraph (see MPEP 2181-2185). It is interpreted literally as requiring only that the 'lever is *capable of* being fixed and detached'. However, it has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. Regardless, in order to expedite prosecution as much as possible, the reference relied upon explicitly teaches structure that "can detachably be fixed, at least in a first position" at col 2, line 16-19.

As regards claim 3, Stevens '596 teaches "support body" - side piece(s) of housing 10, "shaft" - 18, "end-piece of the lever" - 20c.

As regards claims 6/1-6/3, the "head-piece" of the reference is explicitly disclosed to be operated "manually", thereby anticipating alternative limitation.

7. Claims 1-9, 11, 13, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 6,155,616 to Akright.

Akright '616 teaches Applicant's claim limitations including : "separative elements" - door and frame including parts 32,40 as shown in Fig 2 for example, a "support device" - 64, a "locking element" - 160, "head-piece" - opposite element including parts at 146,148,150, "receptacle" - opening formed by loop striker 50, "bearing" - at 92, for a "lever" - 90. The reference explicitly teaches "can detachably be fixed, at least in a first position" by structure including 126,124,140,146,150.

As regards claim 3, Akright '616 teaches "support body" - side piece(s) of housing including 62,64, part 92 reads on "shaft" and portion of 90 that is inside of the housing reads on "end-piece".

As regards claim 4, assuming limitation can be interpreted to include other than a ball and spring element structure, Akright '616 teaches roller (126), spring element (140) and roller/spring housing (124) that reads on "elastic element" limitation.

As regards claim 5, part 160 is facing away from the door in its open position (Fig 7).

As regards claims 6, the "head-piece" of the reference is inherently capable of being "actuated,..., manually" and is explicitly disclosed to be operated by a "closing device" - including portions of 24,26,28,30.

As regards claim 7, limitation of "installation body" reads on part 124 (see Fig 5).

As regards claim 8, it is not clear if the claimed invention includes "detachable" fork plates or not. The reference teaches limitation of "two" with a gap therebetween which reads on "guide track" for receiving groove and ridge parts of part 90.

As regards claim 11, inasmuch as the plane of rotation and p-plane of the door of the reference seem to be analogous to the corresponding disclosed elements now claimed, the limitation setting forth directions is rejected pending clarification since the reference teaches structural arrangement identical to that disclosed and assumably claimed.

As regards claim 13, spring 140 reads on limitation of "damping element".

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8. Claims 1, 2, 5, 6/1, 6/2, 6/5, 7, 13/1, 13/2, 13/5, 14, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by England. Pat. No. 986,941 to Duncan.

Duncan '941 teaches Applicant's claim limitations including : "separative elements" - door and floor as shown in Fig 9-12 for example, a "support device" - pivotal mounting structure for 20, a "locking element" - lower-most portion of 20, "head-piece" - opposite end of 20, "receptacle" - opening 23 in floor, "bearing" - in the area of the pivot, for a "lever" - 20. The illustrates "can detachably be fixed, at least in a first position" in fig 11 for example where the bolt cannot assume the locked position when not aligned with 23.

As regards claim 7, the entire member is adapted to be or "designed to be inserted in,..., the base profile of the second separative element".

As regards claim 13, the spring 25 reads on "damping element". Where it is provided on a "closing device" – 14.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,203,596 to Stevens in view of U.S. Pat. No. 3,023,601 to Luikart.

Although Stevens '596 discloses frictional catch for retaining locked and unlocked positions, the reference does not teach "ball" and "spring element" limitations of claim 4. However, Luikart '601 discloses ball detent structure is long known in the art of door catches. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the locking element of Stevens '596 with ball detent structure as taught by Luikart '601 in order to hold "secure against opening by children" as stated at col 1, line 27.

11. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,203,596 to Stevens in view of U.S. Pat. No. 2,595,436 to Abdallah.

Although Stevens '596 discloses frictional catch for retaining locked and unlocked positions, the reference does not teach "ball" and "spring element" limitations of claim 4. However, Abdallah '436 discloses that ball detent structure equivalent to the spring catch for purpose of holding a position is long known in the art of door catches. It would have been an obvious design choice or engineering expedient for one of ordinary skill in the art at the time of the invention to provide the locking element of Stevens '596 with ball detent structure as taught by Abdallah '436 in order to hold position and provide tactile feedback to the operator as regards position. One of ordinary skill in the art would have more than a reasonable expectation of success since the proposed modification would not otherwise affect the function of the device.

Allowable Subject Matter

12. While no claims can be indicated as containing allowable subject matter at this time especially due to certain indefinite language of the claims requiring broad interpretation. However, it is suggested that certain of the claims rejected under 35 USC 102 premised on the assumption that elements of the combination were not positively recited (based upon indefiniteness noted in rejections made under 35 USC 112, second paragraph) could be amended to positively recite the disputed elements in combination as part of the invention and thereby overcome rejection under 35 USC 102. See MPEP 2173.06.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 2,239,947 to Vanderveld.

U.S. Pat. No. 3,785,684 to Nakanishi.

U.S. Pat. No. 4,391,461 to Deibele.

U.S. Pat. No. 6,106,032 to Och.

U.S. Pat. No. 6,227,581 to Lambert.

U.S. Pat. No. 6,550,824 to Ramsauer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary W Estremsky whose telephone number is 703 308-0494. The examiner can normally be reached on M-Thur 7:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 703 306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary W Estremsky
Examiner
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